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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-349

No. COA21-466

Filed 17 May 2022

Wake County, No. 21 CVD 4617

MARELL YVONNE FRANCIS, Plaintiff,

v.

JACQUELINE BROWN, Defendant.

Appeal by Defendant from order entered 6 May 2021 by Judge J. Brian Ratledge in Wake County District Court. Heard in the Court of Appeals 25 January 2022.

Pruden Feldmann Law, by Paige Feldmann and William Pruden, for Defendant-Appellant.

No brief for Plaintiff-Appellee.

JACKSON, Judge.

¶ 1 Jacqueline Brown ("Defendant") appeals the trial court's entry of a Chapter 50C civil no-contact order against her. Defendant argues that the trial court erred by concluding that Defendant harassed Marrell Yvonne Francis ("Plaintiff") pursuant to N.C. Gen. Stat. § 14-277.3A and entering a no-contact order against Defendant. We disagree and affirm the trial court's entry of the order.

I. Background

¶ 2 At the time of this action, Plaintiff worked as a pharmacy technician at a Walgreens in Durham, North Carolina, where Defendant frequented as a customer. On at least one occasion, Plaintiff alleged that Defendant made degrading statements to Plaintiff, calling her incompetent and incapable of doing her job. During another encounter, Defendant took a video of Plaintiff, expressing her displeasure with the service she was receiving at Walgreens and threatening to make the video public through a livestream. Plaintiff also alleged that Defendant had called corporate to complain about her, and that her health conditions were exacerbated by Defendant's mistreatment. Although they had never interacted outside of the store, based on their previous encounters, Plaintiff was fearful that Defendant would confront her outside of the store or follow her home.

¶ 3 Plaintiff filed a complaint and motion for a no-contact order on 16 April 2021. The trial court held a hearing on 6 May 2021, and both Plaintiff and Defendant testified to the interactions above. Defendant denied all of Plaintiff's allegations, admitting only to taking a brief video, but the trial court ultimately did not find her testimony credible. Based on the parties' testimony, the trial court found that Plaintiff suffered unlawful conduct when Defendant called Plaintiff incompetent and was openly hostile to Plaintiff in Plaintiff's place of work, and on another occasion when Defendant videotaped Plaintiff, creating the impression she would publicly

shame her. On 6 May 2021, the trial court entered a Chapter 50C no-contact order against Defendant until 31 August 2021, ordering Defendant to stay at least 300 yards away from Plaintiff at all times, including while she was working at the Walgreens. The trial court's findings are described in more detail as needed below.

II. Discussion

¶ 4 Defendant argues that the trial court erred by concluding that Defendant harassed Plaintiff pursuant to N.C. Gen. Stat. § 14-277.3A, and therefore the entry of a no-contact order against Defendant should be reversed. We disagree.

A. Standard of Review

¶ 5 When the trial court acts as the factfinder,

> the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts. While findings of fact by the trial court in a non-jury case are conclusive on appeal if there is evidence to support those findings, conclusions of law are reviewable *de novo*.

DiPrima v. Vann, 277 N.C. App. 438, 442, 2021-NCCOA-210, ¶14 (internal marks and citation omitted). Here, the findings of fact are unchallenged and therefore binding on appeal.[1]

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[1] Although Defendant does not specifically challenge the trial court's factual findings, towards the end of her brief she states, "Francis provided no evidence, aside from her own ambiguous testimony, that Brown had ever called Francis 'incompetent.'" We disagree and hold that Plaintiff's testimony was competent evidence to support this finding.

B. Unlawful Conduct to Support 50C Order

¶ 6 A trial court may issue a temporary or permanent civil no-contact order upon "finding that the victim has suffered unlawful conduct committed by the respondent[.]" N.C. Gen. Stat. § 50C-5(a) (2021). "Unlawful conduct" can be either nonconsensual sexual conduct or stalking. *Id.* § 50C-1(7).

¶ 7 "Stalking" is defined by statute as

> [o]n more than one occasion, following or otherwise harassing, as defined in G.S. 14-277.3A(b)(2), another person without legal purpose with the intent to do any of the following:
>
> > a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.
> >
> > b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress.

Id. § 50C-1(6). Therefore, "harassment" falls under the umbrella of "stalking" for purposes of Chapter 50C.

¶ 8 "Harassment," as defined in N.C. Gen. Stat. § 14-277.3A(b)(2), is "[k]nowing conduct, . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." *Id.* § 14-277.3A(b)(2). "However, a finding of harassment alone, even if supported by competent evidence, cannot be the sole basis to sustain entry of a civil no-contact order[.]" *Ramsey v. Harman*, 191 N.C.

App. 146, 149, 661 S.E.2d 924, 926 (2008). In other words, a finding of harassment must still be accompanied by the specific intent from N.C. Gen. Stat. § 50C-1(6)(a) or (b), as outlined above.

¶ 9 Defendant argues that the trial court erred by concluding that Defendant harassed the Plaintiff pursuant to N.C. Gen. Stat. § 14-277.3A when entering a no-contact order. More specifically, Defendant argues that the trial court erred by (1) stating that Defendant harassed, but did not stalk, the Plaintiff, (2) failing to specifically enter a finding that Defendant stalked Plaintiff on more than one occasion, and (3) failing to find the required intent under N.C. Gen. Stat. § 50C-1(6).

¶ 10 First, the trial court's statement that "I don't think we've got stalking going on here[,]" does not create reversible error as Defendant alleges. Defendant omits the remainder of the trial court's quote, which reads in full, "Let me just go ahead and say I don't think we've got stalking going on here. I think we've got an issue – the issue before this Court is does it rise to the level of harassment." This quote in its entirety indicates that the trial court considered the unlawful conduct committed by Defendant to fall under the definition of "harassment," which as discussed above, falls under the umbrella of "stalking." What the trial court appears to be discussing is the distinction between "following or otherwise harassing" from the statutory definition of stalking. *See* N.C. Gen. Stat. § 50C-1(6) (2021).

¶ 11 In its oral findings, the trial court states

> The challenge here is that, as [counsel] appropriately pointed out, there's got to be one or more incident of something that terrorizes, and I believe that we have that here.
>
> The Court finds that the plaintiff has suffered unlawful conduct by the defendant. Defendant has called Plaintiff incompetent in public. They've been openly hostile to Plaintiff and been openly hostile at Plaintiff's workplace. On another occasion, Defendant video-recorded Plaintiff at Plaintiff's workplace and created the impression she was going to let the public know about her disappointments with Plaintiff and her Walgreens.
>
> There is just no legitimate reason in that.
>
> So the Court concludes that you've committed acts of unlawful conduct.

¶ 12 Second, the trial court specifically found that Defendant committed "acts" of unlawful conduct on more than one occasion in both its oral and written findings. Although the trial court misstated the law as requiring "one or more incident[s]" of unlawful conduct, when in fact, the statute requires "more than one occasion" (i.e., at least two incidents) of unlawful conduct, *see* N.C. Gen. Stat. § 50C-1(6), this error is harmless. We reject Defendant's argument that the trial court was required to specifically find that Defendant "stalked" Plaintiff on more than one occasion. We have previously held that "Chapter 50C [does not] require that the trial court use the term 'harassment' or 'stalking' in its findings of fact to support a civil no-contact order. Rather, the court need only find 'that the victim has suffered unlawful conduct committed by the defendant.'" *St. John v. Brantley*, 217 N.C. App. 558, 563, 720

S.E.2d 754, 758-59 (2011) (quoting N.C. Gen. Stat. § 50C-5(a)) (internal brackets omitted). Here, the statute is satisfied because the trial court concluded that Defendant "committed acts of unlawful conduct" against Plaintiff.

¶ 13 Third, the trial court's findings that Defendant had the purpose to intimidate and that Plaintiff was placed in reasonable fear suffice to meet the statutory intent requirement under N.C. Gen. Stat. § 50C-1(6). Although "[t]he plain language of Chapter 50C does not require *any* particular purpose behind a defendant's stalking or harassment, beyond an intent to frighten a plaintiff or cause her severe emotional distress[,]" *Brantley*, 217 N.C. App. at 563, 720 S.E.2d at 758, here, the trial court specifically found that Defendant's unlawful actions were "for one purpose and one purpose only: [] to intimidate and get what [she] wanted." We have previously held that the intent to intimidate meets this statutory requirement. *See Brantley*, 217 N.C. App. at 564, 720 S.E.2d at 759 ("'Intimidate' means 'to make timid or fearful,' 'inspire or affect with fear,' and 'to compel action or inaction (as by threats).' Intimidating a witness in a criminal trial, as the court found occurred here, encompasses all three of these definitions and fully reflects the specific intent required under section 50C-1(6)." (internal brackets and citation omitted)). Additionally, the trial court found that "what we have here is a reasonable fear[,]" which is also consistent with Chapter 50C. *See* N.C. Gen. Stat. § 50C-1(6)(a) (listing one of the specific intent requirements as "intent to . . . [p]lace the person in

reasonable fear [] for the person's safety").

¶ 14 Therefore, the trial court's findings, which are supported by competent evidence, support a conclusion that Defendant's actions to intimidate Plaintiff were "harassment" under § 14-277.3A(b)(2), which falls under the umbrella of "stalking" and therefore "unlawful conduct" under Chapter 50C. We affirm the trial court's entry of a no-contact order, and Defendant's arguments are overruled.

III. Conclusion

¶ 15 For the forgoing reasons, the trial court's Chapter 50C order is affirmed.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).